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1301 K STREET, N.W.

SUITE 900, EAST TOWER

WRITER'S DIRECT DIAL NUMBER

Susan H. R. Jones
(202) 408-7108

WASHINGTON, D.C. 20005

(202) 408-7100

FACSIMILE: (202) 289-1504

CHICAGO, ILLINOIS

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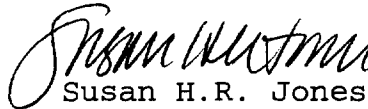
Mr. William Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. Caton:

Transmitted herewith, on behalf of WJG Maritel Corporation, are Comments submitted for consideration with the Further Notice of Proposed Rulemaking, GN Docket No. 93-252, In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services.

If any questions should arise related to this matter, please contact the undersigned counsel at the direct line noted above.

Sincerely,


Susan H.R. Jones

Attachment

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
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Implementation of Sections 3(n) and 332) GN Docket No. 93-252
the Communications Act)
)
)
Regulatory Treatment of Mobile Services)

WJG MARITEL CORPORATION
COMMENTS
to
FURTHER NOTICE OF PROPOSED RULEMAKING

RECEIVED
JUN 20 1994
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

I. Introduction

WJG Maritel Corporation ("WJG"), by its attorneys, pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission") hereby submits its comments in response to the Further Notice of Proposed Rulemaking ("Further Notice") adopted in the above referenced proceeding^{1/} designed to provide a transition to a new regulatory scheme for mobile communications service.

WJG is the largest provider of public coast station services in the United States. Its stations cover the Gulf of Mexico, the Southern Atlantic Coast, and U.S. inland waterways. WJG's present inland waterway network serves most areas from Baton Rouge, Louisiana to Chicago, Illinois. Its southern Atlantic system serves most major markets from Morehead City, North Carolina to the Florida Keys. The network consists of 67 transmit locations, each interconnected to one of three

^{1/} Further Notice of Proposed Rulemaking, GN Docket No. 93-252, FCC 94-100, Released May 20, 1994.

control switching offices located in Gulfport, Mississippi; Memphis, Tennessee and Hollywood, Florida. Public coast stations, regulated under Part 80 of the Commission's Rules, provide interconnected common carrier public correspondence telecommunications and data services to sea-going vessels, barges and recreational boaters on frequencies designated for VHF maritime radio.

During the last few years, public coast stations have experienced intense competition from cellular providers who are able to offer contiguous coverage on inland waterways, tidewater areas, the Great Lakes, and on coastline waters up to ten miles off the United States shore lines. The emergence of cellular competition in the public coast station industry has been recognized by the Commission: "cellular radio offers increasingly competitive service that is supplanting the use of public coast stations. In the Gulf of Mexico, for example, Petrocom operates an offshore cellular radio service that provides voice and data services to ships up to 200 nautical miles offshore."^{2/}

WJG's public coast stations along the southeast United States coast line, the Gulf of Mexico, and inland waterways, have been negatively affected by cellular competition. WJG's business in the Florida market has declined forty (40) percent during this past season. Recognizing the competitive threat of cellular, WJG had increased its coverage and offered improved service compared to the previous year. Its loss in revenue, therefore, is due to the growth of cellular providers. Cellular providers are clearly offering "a substantially similar" service, meeting "similar customer demands." However, cellular operators are able to provide these services without the regulatory burden imposed upon public coast stations. The Commission has acknowledged the growth of the mobile communications market and the inability of public coast stations to properly compete: "the current

^{2/} Notice of Proposed Rulemaking and Notice of Inquiry, In the Matter of Amendment of the Commission's Rules Concerning Maritime Communications (hereinafter "Amendment of Maritime Rules"), 7 FCC Rcd 7863, 7870, ¶ 35, (Pri.Rad.Bur. 1993).

regulatory structure may have hampered the maritime community from taking advantage of many of the new technologies that could reduce congestion,"^{3/} and presumably enable public coast stations to compete in the ever-growing market. WJG is not alone in enduring the impact of cellular competition. It is widely acknowledged by those in the public coast station industry that the customer base of public coast stations has eroded during the recent years of cellular growth. Anecdotal evidence indicates that more public coast stations are closing than are opening.

Public coast stations have traditionally been regulated by both the Private Radio Bureau and the Common Carrier Bureau as a hybrid service. Until recently, public coast stations have fallen under the definition of "dominant" common carriers for purposes of the Title II requirements of the Communications Act of 1934, as amended ("the Act," or "Communications Act").^{4/} Under the Commission's Second Report and Order that implemented the basic provisions of Sections 3(n) and 332 of the Communications Act pursuant to the Omnibus Budget Reconciliation Act of 1990,^{5/} however, public coast stations have been reclassified as commercial mobile radio service ("CMRS") providers in that they provide to the public, for profit, a radio service with interconnection to the public switched telephone network ("PSTN"). As a newly reclassified CMRS provider, therefore, WJG is pleased to have this opportunity to respond to the Further Notice.

^{3/} Amendment of Maritime Rules, 7 FCC Rcd at 7864.

^{4/} A Notice of Proposed Rulemaking, 7 FCC Rcd 7863 (Pri.Rad.Bur. 1993), pending before the Commission, proposes to reclassify public coast stations as non-dominant common carriers.

^{5/} Second Report and Order, *In the Matter of the Implementing Sections 3(n) and 332 of the Communications Act pursuant to the Omnibus Budget Reconciliation Act of 1990, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, 9 FCC Rcd 1411 (1994), *erratum*, No. 920486, released March 30, 1994.

II. Technical Rules

A. Channel Assignment and Service Areas

Under the present regulatory scheme, public coast station licensees are granted individual channels on a station-based configuration.^{6/} Like specialized mobile radio ("SMR") systems, and other Part 90 services, public coast station service areas are defined by transmitter location, antenna height, and the transmitter power of each base station. Cellular licensees, however, benefit from the assignment of large spectrum blocks allowing contiguous coverage "footprints" within Cellular Geographic Service Areas ("CGSAs").

WJG requests that the Commission implement a system of service area coverage defined by the FCC for public coast stations, similar to that used in the cellular service. Licensing maritime land-based radio service in this way has already been partially adopted by the Commission for Automated Marine Telephone Service ("AMTS"). AMTS licenses are granted in frequency blocks, to multiple stations, permitting contiguous coverage along designated navigable inland waterways. As a result, AMTS licensees are able to provide continuous communications service to their mobile customers within the region by operating *one system, rather than numerous individual stations*.

WJG acknowledges that the public coast service is well-established and that re-designing the licensing process at this juncture would be difficult. Nonetheless, WJG proposes that the Commission consider implementing a dual licensing program where large public coast entities like WJG, who already hold licenses for continuous service areas, may consolidate their individual station

^{6/} Subpart P of Part 80 of the Commission's Rules, 47 C.F.R. Part 80, Subpart P. Section 80.755 of the Commission's Rules, 47 C.F.R. § 80.755, requires that applications for maritime frequencies in the 156-162 Mhz band must include a map showing the proposed service area contour.

licenses into "footprint" system-based licenses. Individual licenses could be subject to a sunset period, at the end of which, all public coast station licenses would be subject to consolidated block licensing.

By instituting such a revised licensing process, the Commission would ensure that public coast station licensees would benefit from a stream-lined and less burdensome application and regulatory compliance process already profiting cellular licensees. At present, an operator like WJG must continually update and maintain nearly 100 licensing files. By licensing on a system basis, as it does for cellular providers, the Commission would relieve multi-station public coast operators from a costly and time-consuming application process now inherent in building broader coverage.

III. OPERATIONAL RULES

A. Automatic Interconnection.

The Commission's Rules presently prohibit public coast stations from providing automatic interconnected service.^{7/} Each call initiated by a VHF marine radio, therefore, must be connected to the switched network and completed by a live operator at the coast station base station. The negative and burdensome result of this prohibition is manifest: 1) the cost of maintaining qualified and properly licensed personnel; 2) the time-consuming and inefficient use of spectrum; 3) billing arrangements, with credit card references, must be communicated over public frequencies vulnerable to interception. There is no similar provision or restriction for cellular operators that has a

^{7/} Sections 80.153 and 80.207 of the Commission's Rules, 47 C.F.R. §§ 80.153, 80.207, combine to require that public coast stations must have FCC licensed operators on duty during periods of operation and limit the type of emissions to voice and brief use of telegraphy.

comparable hampering effect on the efficient and marketable operation of cellular service. Therefore the automatic interconnection prohibition for public coast station licensees, therefore, must be eliminated.^{8/}

B. Loading Requirements

Presently, initial grants of public coast station authorizations are limited to one working frequency. Additional frequencies become available when sufficient loading and use of the channel can be adequately demonstrated.^{9/} Because many public coast stations operate on a seasonal basis, with the greatest volume of traffic during the summer months, licensees must often delay filing an application and loading analysis sufficient to justify additional channels, until after the conclusion of the first boating season following the station's initial grant. The cost and delay caused by preparing such a loading analysis, and the restriction to only one working channel during, at least, the first boating season for an initial licensee, is a direct hinderance to a public coast station's attempts to aggressively market its service and to adopt advanced technologies to further efficient use of the spectrum.

WJG recognizes that the regulatory purpose underlying any loading requirements, such as those currently imposed upon public coast station licensees, is to prevent "warehousing" of unused spectrum. WJG respectfully submits, however, that the Commission has other effective opportunities

^{8/} The Commission has issued waivers for public coast station operators, permitting them to provide automated service. See Jeffrey Weinstein, Portland Marine Operator, January 29, 1993. The cost and delay for applying for such a waiver, however, is an unnecessary expense for public coast station operators, one unparalleled in the cellular licensees.

^{9/} 47 C.F.R. § 80.371(c).

to police or prevent "warehousing."^{10/} In the Further Notice, the Commission recognizes the impediments placed on SMRs by loading requirements and proposes their elimination in that service. There, the Commission would use construction and coverage requirements to ensure efficient use of the spectrum. Similarly, in the public coast station industry, there is little incentive by applicants or licensees to collect unused channels. Accordingly, the Commission's preventative efforts here do not adequately address a problem, if one even exists. Moreover, cellular applicants currently have, and wide-area SMRs will likely have, no comparable burden to justify requirements for more than channel. Accordingly, WJG respectfully suggests that these provisions of the Commission's Rules be deleted in their entirety.

C. Land Mobile Service

In paragraphs 76-79 of the Further Notice, the Commission seeks comment on "permissible uses" of "particular types of mobile radio equipment" to further competition between similar services. WJG proposes that the Commission adopt regulations that will permit public coast stations to provide, on a secondary basis to maritime traffic, land mobile two-way radio service. The Commission has approved such use of maritime frequencies on an *ad hoc* basis in the past by granting individual waivers, limited to off-peak season when maritime frequencies are not

^{10/} The Commission may wish to establish a Finder's Preference Program for public coast station licensees, similar to that applicable to Part 90 licensees. Under such a program, a "finder" of unused frequency would have the burden to present *prima facie* evidence that the "target" licensee was in violation of certain Commission rules relevant to the proper construction and operation of channels. Upon the Commission's determination that the "target" was indeed, violating such rules, the "finder" is granted a dispositive preference in applying for those channels.

typically congested.^{11/} WJG now seeks revision of the Commission's Part 80 to remove the burden to public coast station licensees of applying for a waiver for such a "permissible use." And further, seeks that a public coast station's ability to provide land mobile service not be limited by seasonal, or off-peak, use of maritime frequencies. Current technology permits a station licensee to program equipment to discern and prioritize transmissions. A public coast station will thus be able to definitively ensure that calls initiated by VHF marine users will be accorded priority over a land mobile use.

WJG asserts that by permitting the expansion of permissible uses, as proposed here, customer service to the maritime community will be improved. Specifically, by permitting public coast stations to engage in revenue-gathering activity throughout the entire year, the costs of maintaining infrastructure and introducing new technology will be spread over a larger customer base. Therefore, public coast stations will thus be able to improve service by reducing costs to the maritime community.

Subject to the understanding that maritime traffic must take priority over land-based communications, WJG suggests that the ability of public coast station licensees to provide expanded, land-based two-way radio service will greatly enhance the competitive opportunities for public coast stations in the mobile communications market. WJG therefore respectfully requests that the Commission modify Part 80 accordingly.

IV. LICENSING RULES AND PROCEDURES

A. Regulatory Fees

^{11/} See e.g. *In the Matter of Answer Exchange, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 633 (1988); *In the Matter of Recreational Marine Association*, Memorandum Opinion and Order, 4 FCC Rcd 6287 (1989); *In the Matter of Whidbey Telephone Company*, Memorandum Opinion and Order, 4 FCC Rcd 8305 (1989).

The Further Notice seeks comment on the Commission's authority to collect annual regulatory fees from all Commission licensees to recover costs incurred in carrying out its regulatory activities.^{12/} The Commission has proposed the application of regulatory fees assessed on a per-subscriber fee for all CMRS licensees. WJG requests that the Commission, in adopting rules to define "subscriber" and the fees subsequently assessed, do so on a basis that will not present burdensome fees for occasional or infrequent users of public coast station services. In the same way that cellular licensees will presumably not be required to pay regulatory fees based upon service to "roamers," WJG should not be required to pay fees based on its provision of service to any vessel that uses its system on an itinerant basis.

B. License Term/Renewal Expectancy

WJG strongly supports the Commission's proposal to adopt similar provisions for renewal expectancy as is contained in Part 22 of the Commission's Rules for all CMRS services. Like cellular licensees, a public coast station licensee that has 1) provided substantial service during the license term, and 2) has complied with the applicable Commission Rules, policies, and the Commissions Act, should qualify for a renewal expectancy at the end of its license term. Presently, the Commission's Rules do not grant a renewal expectancy for public coast station licensees following their five (5) year term. In light of this, a public coast station licensee is subject to competitive applications following the expiration of its authorization. Because the Commission's Rules for random selection apply only to competitive initial applications,^{13/} a public coast renewal applicant can be effectively prevented from continuing maritime service by less qualified competitive applicants. Worse still, the only procedural mechanism contained in the Commission's Rules to resolve such disputes between a renewing application and an initial application, is

^{12/} Further Notice, at §116.

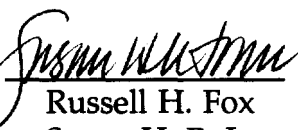
^{13/} 47 C.F.R. § 1.972(c).

a comparative hearing proceeding, subject to a \$6,760.00 fee.^{14/} Public coast station licensees simply do not have the financial resources to pursue this type of relief, and frequently a viable public coast station is forced to discontinue operations as a result. If a public coast station is effectively forced to discontinue operations under the present rules, the public interest is not being served. Therefore, WJG strongly supports the adoption of renewal expectancies for all CMRS licensees.

WHEREFORE, THE PREMISES CONSIDERED, WJG Maritel Corporation hereby submits the foregoing Comments and urges the Federal Communications Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

WJG MARITEL CORPORATION

By: 

Russell H. Fox
Susan H. R. Jones
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005
(202) 408-7100
Its Attorneys

Dated: June 20, 1994

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^{14/} 47 C.F.R. §1.1102.